

## HOUSE BILL NO. 533

INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MEDICAL PRIVACY TERMS FOR WORKERS' COMPENSATION PURPOSES; REMOVING AUTOMATIC DISCLOSURE AUTHORIZATION TIED TO A SIGNED WORKERS' COMPENSATION CLAIM; REQUIRING WRITTEN, CONTEMPORANEOUS NOTICE TO INJURED EMPLOYEES WHOSE MEDICAL INFORMATION IS PROVIDED BY HEALTH CARE PROFESSIONALS TO WORKERS' COMPENSATION INSURERS; AND AMENDING SECTIONS 39-71-604 AND 50-16-527, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 39-71-604, MCA, is amended to read:

**"39-71-604. Application for compensation -- disclosure and communication ~~without prior notice~~ of health care information.** (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and proof of other matters that may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) ~~A~~ Subject to the requirements in subsection (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information, as allowed under the Montana Rules of Civil Procedure, by the workers'

1 compensation court or as otherwise provided by law.

2 ~~(3) A signed claim for workers' compensation or occupational disease benefits or a signed release~~  
3 ~~authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation~~  
4 ~~insurer to communicate with a physician or other health care provider about relevant health care information,~~  
5 ~~as authorized in subsection (2), by telephone, letter, electronic communication, in person, or by other means,~~  
6 ~~about a claim and to receive from the physician or health care provider the information authorized in subsection~~  
7 ~~(2) without prior notice. A health care provider may not disclose information to a workers' compensation insurer~~  
8 ~~or its agent under subsection (2) unless the request for information is in writing and certifies that a copy of the~~  
9 ~~request, together with copies of any documents enclosed with the request, has been contemporaneously~~  
10 ~~provided, by mail or in person, to the injured employee, to the employee's authorized representative or agent,~~  
11 ~~or in the case of death, to the employee's personal representative or any person with a right or claim to~~  
12 ~~compensation for the injury or death. An insurer or its agent may request information authorized to be disclosed~~  
13 ~~under subsection (2) by electronic mail or by facsimile transmission if:~~

14 (a) the injured employee or the employee's authorized representative or agent has the means to receive  
15 electronic mail or facsimile transmission;

16 (b) the request certifies contemporaneous transmission by electronic mail or facsimile transmission to  
17 the injured employee or to the employee's authorized representative or agent; and

18 (c) the insurer or its agent retains a paper copy of the electronic mail or facsimile transmission. The  
19 paper copy must be provided to the injured employee or the employee's authorized representative or agent upon  
20 request.

21 (4) If death results from an injury, the parties entitled to compensation or someone in their behalf shall  
22 file a claim with the insurer. The claim must be accompanied with proof of death and proof of relationship,  
23 showing the parties entitled to compensation, certificate of the attending physician, if any, and ~~such~~ other proof  
24 ~~as that~~ may be required by the department."

25  
26 **Section 2.** Section 50-16-527, MCA, is amended to read:

27 **"50-16-527. Patient authorization -- retention -- effective period -- exception -- communication**  
28 **~~without prior notice for workers' compensation purposes.~~** (1) A health care provider shall retain each  
29 authorization or revocation in conjunction with any health care information from which disclosures are made.

30 (2) Except for authorizations to provide information to third-party health care payors, an authorization

1 may not permit the release of health care information relating to health care that the patient receives more than  
2 6 months after the authorization was signed.

3 (3) Health care information disclosed under an authorization is otherwise subject to this part. An  
4 authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30  
5 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

6 (4) Notwithstanding subsections (2) and (3) and subject to the requirements of subsection (5), a signed  
7 claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers'  
8 compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health  
9 care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider  
10 to disclose or release only information relevant to the claimant's condition. Health care information relevant to  
11 the claimant's condition may include past history of the complaints of or the treatment of a condition that is  
12 similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions  
13 related to the same body part, or conditions that may affect recovery. A release of information related to workers'  
14 compensation must be consistent with the provisions of this subsection. Authorization under this section is  
15 effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the  
16 scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil  
17 Procedure, by the workers' compensation court, or as otherwise provided by law.

18 (5) ~~A signed claim for workers' compensation or occupational disease benefits or a signed release~~  
19 ~~authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation~~  
20 ~~insurer to communicate with a physician or other health care provider about relevant health care information,~~  
21 ~~as authorized in subsection (4), by telephone, letter, electronic communication, in person, or by other means,~~  
22 ~~about a claim and to receive from the physician or health care provider the information authorized in subsection~~  
23 ~~(4) without prior notice.~~ A health care provider may not disclose information to a workers' compensation insurer  
24 or its agent under subsection (4) unless the request for information is in writing and certifies that a copy of the  
25 request and copies of any documents enclosed with the request have been contemporaneously provided, by  
26 mail or in person, to the injured employee, to the employee's authorized representative or agent, or in the case  
27 of death, to the employee's personal representative or any person with a right or claim to compensation for the  
28 injury or death. An insurer or its agent may request information authorized to be disclosed under subsection (4)  
29 by electronic mail or by facsimile transmission if:

30 (a) the injured employee or the employee's authorized representative or agent has the means to receive

1 electronic mail or facsimile transmission;  
2 (b) the request certifies contemporaneous transmission by electronic mail or facsimile transmission to  
3 the injured employee or to the employee's authorized representative or agent; and  
4 (c) the insurer or its agent retains a paper copy of the electronic mail or facsimile transmission. The  
5 paper copy must be provided to the injured employee or the employee's authorized representative or agent upon  
6 request."  
7 - END -